house-owner is the cause. 4 BLACKSTONE'S COMMENTARIES, 226. Any such consideration is wholly inconsistent with the basic theory of the criminal law, that the state is the party plaintiff. *Reg.* v. *Kew*, 12 Cox C. C. 355. And where, with equal carelessness, a door or window was left unlocked, but wholly closed, one who entered was convicted of burglary. *May* v. *State*, 40 Fla. 426, 24 So. 498. Also where the breaking consisted of merely tearing out a twine lattice-work. *Commonwealth* v. *Stephenson*, 8 Pick. (Mass.) 354. Nor is there in fact any invitation held out by such negligence. But see *Timmons* v. *State*, 34 Oh. St. 426, 427. The probable explanation is that an artificial distinction was taken *in favorem vitæ*, at a time when burglary was a capital offense. Logically, widening an opening, not large enough to admit the defendant, by pushing up a window, or sliding back a door, is the forcible removal of an obstacle to entering, and a breaking of a part of the dwelling-house relied on as a security against intrusion. See *Metz* v. *State*, 46 Neb. 547, 553, 65 N. W. 190, 192; *State* v. *Boon*, 13 Ired. 244, 246. There is a growing tendency to follow the view expressed in the principal case. *Claiborne* v. *State*, 113 Tenn. 261, 83 S. W. 352; *State* v. *Sorenson*, 138 N. W. 411 (Ia.).

CARRIERS — PASSENGERS: WHO ARE PASSENGERS — RIDING WITH FRAUDULENT TICKET BEFORE IT HAS BEEN COLLECTED. — The plaintiff obtained a ticket on the defendant railroad at a reduced rate by falsely representing himself to be a commercial traveler. He was injured by the defendant's negligence, before the ticket was taken up by the conductor. *Held*, that he can recover. *Ashbee* v. *Canadian N. Ry. Co.*, 25 West. L. R. 884 (Sask.).

The relation of carrier and passenger is consensual in character, requiring that the parties should mutually assent to its creation. See *Webster* v. *Fitchburg R. Co.*, 161 Mass. 298, 299, 37 N. E. 165, 166. The express assent of the carrier is often evidenced by the collection of a ticket or cash fare from the party presenting himself for transportation. *Illinois C. R. Co.* v. *Treat*, 179 Ill. 576, 54 N. E. 290. But if such assent is obtained by fraud, the wrongdoer cannot make it the foundation of a right of action. *Fitzmaurice* v. *New York, N. H. & H. R. Co.*, 192 Mass. 159, 78 N. E. 418; *Way* v. *Chicago, R. I. & P. R. Co.*, 64 Ia. 48, 19 N. W. 828. The carrier's assent to the creation of the relationship is implied, where the applicant exactly complies with the terms of the general outstanding invitation to the traveling public. *Webster* v. *Fitchburg R. Co.*, *supra*; *St. Louis & S. F. S. R. Co.* v. *Kilpatrick*, 67 Ark. 47, 54 S. W. 971. This invitation is limited to those who intend to become *bonâ fide* passengers. Thus it is generally held not to include travelers trying to steal a ride, even though they may be prepared to pay fare if compelled to. *Wynn* v. *City & S. Ry. Co.*, 91 Ga. 344, 17 S. E. 649; and see *Chicago, R. I. & P. R. Co.* v. *Moran*, 117 Ill. App. 42, 45. Upon similar reasoning it would seem that the invitation was not extended to a traveler such as the plaintiff in the principal case, since he did not intend to pay the proper fare unless his fraud were discovered. It follows that the defendant owed him no duty of due care.

CARRIERS — PERSONAL INJURIES TO PASSENGERS — ASSAULT BY ANOTHER PASSENGER — CONDUCTOR ASKING PASSENGER'S ASSISTANCE. — The plaintiff while a passenger on the defendant's train, went at the request of the conductor to help restrain an intoxicated passenger who had been wandering through the coaches and resisting efforts to keep him from jumping from the train. The conductor left the plaintiff, who was thereafter assaulted by the intoxicated man. *Held*, that the direction of a verdict for the defendant was correct. *Spinks* v. *New Orleans, M. & C. R. Co.*, 63 So. 190 (Miss.).

For a discussion of the principles involved, see NOTES, p. 376.

CONFLICT OF LAWS — SITUS FOR PURPOSE OF GRANTING ADMINISTRATION — STOCK IN CORPORATION. — The testator died domiciled in Bermuda leaving

in New York shares of stock of the defendant, a New Jersey corporation. The defendant corporation maintained an office in New York for the transfer of shares. *Held*, that the certificates constituted property in the state for the purpose of founding administration. *Lockwood* v. *United States Steel Corporation*, 50 N. Y. L. J. 961 (N. Y. Ct. App., Nov. 25, 1913).

The principal case is clearly right. The state of New York had complete power over the chose in action represented by the certificates, since, there being a transfer office in the state and the corporation itself being liable to suit there, the courts of the state could furnish the remedies for a complete reduction to possession. *In re Clark*, [1904] 1 Ch. 294. The same principle applies to insurance policies. *New England Mutual Ins. Co.* v. *Woodworth*, 111 U. S. 138, 4 Sup. Ct. 364; *Morgan* v. *Mutual Benefit Ins. Co.*, 187 N. Y. 447, 82 N. E. 438. A more difficult question arises when all that exists as a basis for the attempt to found administration is the certificate itself. *Richardson* v. *Busch*, 198 Mo. 174, 95 S. W. 894. It is held that the certificate is taxable where it is, irrespective of the domicil of the corporation or owner. *Stern* v. *Queen*, [1896] 1 Q. B. 211; *Dwight* v. *Boston*, 12 Allen (Mass.) 316. The certificate can be attached under the same circumstances. *Simpson* v. *Jersey City Co.*, 165 N. Y. 193, 58 N. E. 896; *Puget Sound Nat. Bank* v. *Mather*, 60 Minn. 362, 62 N. W. 396. And by the American view a transfer of the certificate gives a complete irrevocable power of attorney to reduce to possession. *Leyson* v. *Davis*, 17 Mont. 220, 42 Pac. 775; *Grymes* v. *Hone*, 49 N. Y. 17. It would seem, therefore, that the courts as well as laymen consider the certificate itself a thing of value. *In rerum natura* a chose in action has no real *situs*. Its locality therefore should be governed by the possibility of control over its reduction to possession. Two different states may conceivably possess this control, and therefore it is submitted that administration might be had of the interest where the certificate is, as well as at the domicil of the corporation. The authorities, however illogically it seems, in view of the attachment and taxation cases, deny this possibility. The courts call the certificate merely evidence of the interest, and require that the interest be capable of complete reduction to possession within the state before allowing administration of it there. *Richardson* v. *Busch*, *supra*; *Grayson* v. *Robertson*, 122 Ala. 330, 25 So. 229; *Murphy* v. *Crouse*, 135 Cal. 14, 66 Pac. 971.

CONSTITUTIONAL LAW — PERSONAL RIGHTS — LIBERTY TO CONTRACT — STATUTE INVALIDATING CONTRACTS FOR ARBITRATION OF FUTURE DISPUTES. — A statute declared void any provision in a contract whereby the award of any person was made conclusive of the rights of the parties thereunder. *Held*, that the statute is repugnant to a clause of the state constitution guaranteeing the right of "acquiring and possessing property." *Adinolfi* v. *Hazlett*, 242 Pa. 25, 88 Atl. 869.

For a discussion of the legislative power to limit freedom of contract, see NOTES, p. 372.

CONTRACTS — SUITS BY THIRD PERSONS NOT PARTIES TO THE CONTRACT — UNASCERTAINED AND INCIDENTAL BENEFICIARY. — In consideration of a conveyance of land by a person now deceased, the defendant promised to maintain him during life and to pay his funeral expenses at death. Representatives of the undertaker who buried the deceased sue on the promise. *Held*, that they cannot recover. *Lockwood* v. *Smith*, 143 N. Y. Supp. 480 (Sup. Ct.).

In New York a third person can recover on a contract to which he is not a party, only when he has a legal right, founded on some obligation of the promisee to him, to adopt and claim the promise as made for his benefit. *Vrooman* v. *Turner*, 69 N. Y. 280. The principal case denies recovery on this ground. This requirement bases the right of the third party to an action at law on his